

AOSE ADVISORY COMMITTEE

MEETING MINUTES:

November 16, 2006

On November 16, 2006, the AOSE Advisory Committee held a in the Fifth Floor Conference room of the Office of Environmental Health Services, 109 Governor Street, Richmond, Virginia 23219. The following committee members attended in person or via polycom:

- David Fridley, AOSE, Virginia Department of Health, Three Rivers Health District
- Dan Horne, Virginia Department of Health, Virginia Beach Health District
- Curtis H. Moore, AOSE, CPSS;
- Pam Pruett, AOSE;
- Andre Fontaine, P.E., Real Estate Agent
- David Waldrep, Virginia Department of Health, Piedmont Health District;
- Dwayne Roadcap, Facilitator, VDH-Division of Onsite Sewage & Water Services

The following committee members were not present:

- Chip Dunn, P.E., AOSE
- Wayne Fenton, Well Driller
- Ken Addison, surveyor
- Ray Wilson, contractor
- Frances Wright, contractor
- Stuart McKenzie, local government
- Neal Spiers, AOSE, CPSS

Others present: David Hogan, Jim Bowles, Dave Tiller, Jim Slusser, Bill Craun, Jeff McDaniel, Alan Brewer.

Handouts for the meeting included the following:

1. Meeting agenda;
2. Future Discussion Topics (updated);

Committee Purpose: The Advisory Committee makes recommendations to the Commissioner of Health on policy, procedures, and regulations for the Authorized Onsite Soil Evaluator (AOSE) program. The committee's discussion and recommendations are only limited by what the Committee wishes to address. Committee members and stakeholders may attend meetings via remote locations through the health department's video-conferencing system.

Committee Decisions: The committee reaches all decisions using a "full-consensus" mechanism, meaning that all members in attendance must agree before a recommendation is sent to the Commissioner. Members who do not attend a meeting are expected to support their fellow members on decisions reached in their absence.

Ground rules:

1. Respect all views and welcome new ideas.
2. Participate, be candid, and avoid personal attacks.
3. Be respectful when you have the floor. Keep comments pithy and concise. Limit speaking time to assure that all members have an opportunity to be heard.
4. Listen for new understandings and offer new perspectives.
5. Focus on agenda and topic. Assist facilitator and chairperson in keeping the discussion focused and on topic.
6. Avoid "side bar" conversations and hidden criticism.

The Committee will seek non-committee input on an as-needed basis. The facilitator or chair person may recognize a non-member.

Committee Discussion and Recommendations:

Curtis Moore stated that the group working on writing the site and soil evaluation criteria for the regulation development will have its work completed by December 15 for Don Alexander's review. The group, which consists of Bill Sledjeski and the four Virginia Tech soil scientists, has had several meetings. Moore stated that the group was not trying to think outside of the box and they hoped that their work will be easier to understand than the current regulations. They were focusing on what should be in a site and soil description. Moore emphasized that his group's work could be significantly changed after the health department reviewed and edited it

The committee discussed Level 1 and 2 reviews. Jim Slusser stated that Loudoun County had held several meetings with AOSEs and even though he did not think Loudoun staff were following the AOSE policy and regulations exactly, they were making changes and re-evaluating their processes. Slusser stated that Loudoun County staff performed Level 1 reviews in a timely manner and that most of the AOSE concerns in Loudoun dealt with how Loudoun County performed Level 2 reviews. In Loudoun, staff perform a 100 percent Level 2 review on every AOSE submittal.

Slusser's primary concern was that Loudoun staff required one fresh backhoe pit on every subdivision lot to perform its Level 2 review. Even though AOSEs describe five or 6 soil profiles from backhoe pits, Loudoun staff would routinely overturn AOSE decisions based on their one backhoe pit observation. If the AOSE found 5 to 6 suitable soil profiles from backhoe pit evaluations, Loudoun staff would ignore all of that information and treat their one backhoe pit evaluation as the only meaningful information.

One member on the AOSE committee noted that performing Level 2 reviews, especially 100 percent Level 2 reviews, was very expensive to owners. Owners had to hire a backhoe operator and backhoe twice: once for the AOSE evaluation and then later for the Level 2 review. One person asked the committee what was the purpose of the Level 2 review. If the Level 2 review was a quality assurance check on the AOSE's work, then why did they need a fresh test pit? For quality assurance, health department staff could use a pick and look at pre-existing test pits rather than have the owner hire another backhoe visit for a fresh pit. Another person noted that owners and clients had significant delays from the Level 2 reviews because it would sometimes take two to three months to schedule another site visit with a backhoe operator.

One person stated that he thought Loudoun County was not following the intent of the regulations, which allows AOSes to provide services in a timely manner. The 100% Level 2 review was an onerous procedure and reflected that Loudoun saw itself as a direct service provider rather than an agency to assure services. This person wondered whether Loudoun was out of the loop or if it did not trust the AOSE work. Another person stated that there was a level of distrust in Loudoun County. This person thought that Loudoun staff perceived that AOSes were slaves to the development community, which has a financial incentive to circumvent rules that protect public health. Most persons agreed that there was an adversarial atmosphere in Loudoun between the health department and AOSes. One person thought that the issue had gotten personal with some stakeholders.

Another person stated that Loudoun County was not the only district that required 100% Level 2 reviews. This person thought that Fauquier County also required developers to pay for a second Level 2 review with backhoe pits. A lot of AOSes were doing smaller, single lot evaluations. In Loudoun, AOSes were charging \$3,000 to \$4,000 per lot because of Loudoun's requirements. Even though Loudoun did not require backhoe pits for the AOSE work, the AOSE would be foolish to not review backhoe pits because Loudoun will only perform Level 2 review with backhoe pits. You cannot auger soil profiles in Loudoun although they will allow auger profiles for evaluating failing sewage systems.

One person stated that if the health department performs the Level 2 review for quality assurance but makes final decisions about the lot on their one QA pit, then staff were in effect repeating the AOSes evaluation with less information. A VDH person noted that Level 2 reviews were a quality assurance check. If a problem were found with the QA review, then additional information was necessary. If you find something different from the Level 2 review than what was described by the AOSE, then VDH was obligated to assure that the work was appropriate and accurately described the site and soil conditions. VDH could not just ignore conflicting information.

For Level 2 reviews, VDH staff were performing a QA/QC check of the AOSE's work. VDH would consider landscape, contour, and perform 1-auger boring to confirm the work. If the 1-boring (or backhoe pit) matches are re-affirms the AOSE's work, then staff move on to the next lot. If VDH finds a problem, then it could be considered an

anomaly but you still need a second soil profile to be sure of that. VDH staff should look for a predominance of evidence to determine whether the site complies with the regulations. The presumption should be that the soil is acceptable and that the AOSE properly certified and documented the site and soil conditions. VDH understands that soil can be variable but significant differences in soil descriptions could not be ignored if the one QA/QC check found something very different. One VDH employee described a situation where the consultant had 3 soil borings recorded and described a restriction beginning 36-38 inches deep. On the Level 2 review, VDH staff found iron accumulations and other evidence of a restriction beginning 33 inches deep. VDH staff augured three additional soil borings. The four VDH borings indicated a restriction beginning 33 inches while the AOSE had 3 borings at 36 inches. In this case, VDH scheduled a meeting with the AOSE.

The committee thought that it should evaluate the issue of Level 2 reviews more. Committee members noted that local health departments had many different philosophies with respect to Level 2 reviews. Some health departments only looked at 10% of the AOSEs' work while others were doing 100% reviews.

In Loudoun, a person suggested that there was a 10 to 12 month backlog to do the Level 2 review. This person believed that there was a total log-jam in Loudoun because of the 100% Level 2 review mandate. This person suggested that Loudoun had to do a better job of reducing the backlog if it was going to require 100% level 2 reviews when only a 10% review was mandated by the central office. This person stated that Loudoun staff had an unwritten rule to only look at 10 backhoe pits per day. Loudoun was making changes but more change was necessary to increase their productivity. Another person asked why these sites in Loudoun were not deemed approved if they were taking too long to review AOSE work.

The person responded that with deemed approval, there was a "loophole" being used by Loudoun County. The trigger to start the 60 day time line: Loudoun would say that they had reviewed everything within the time frame for the state rules but "deemed approval" was not possible because they still had to review everything under their local ordinances. Hence, nothing gets deemed approved in Loudoun. The trigger to start the time-line never starts in Loudoun. When does the deemed approval time start and end? Committee members suggested that they could explore this issue. If the trigger was the day that you made the application, theoretically there would be a deemed approval date, whether a review was made or not. One person mused that perhaps Loudoun may have been a little slow in implementing the program.

A VDH staff person noted that the health department does subdivision reviews for the county and that VDH does not respond to requests from owners or AOSEs. One person thought that was a broken process. The timeline should start when the local government requests a review. While VDH responds to the county for subdivision review, it did not eliminate the possibility of owners/AOSEs approaching the health department anytime about the county request. The counties usually have a central clearing house at zoning/planning and that usually works best. A person noted that, unfortunately, some

counties would start the subdivision process over if a lot were lost from a Level 2 review. The AOSE had to do a good job. Most VDH persons reported that the clock started for “deemed approved” when the county asked for a subdivision review. Another person stated that in Loudoun County, many employees are solely funded by the county rather than state. The county does not request subdivision reviews and their local ordinances seem to require a different type of review process than what the state intended. This person asked how could AOSEs motivate change in Loudoun.

In Loudoun, subdivision applicants cannot go directly to the county. They are required to go to the health department first to approve the wells and drainfields. In essence, Loudoun county local ordinances prohibited VDH staff from following the state’s guidance for processing subdivisions. Alan Brewer, EH Manager in Loudoun stated that the local health department started the 60-day limit review when applicants submitted their request. Brewer stated that Loudoun was following the state way of doing business to the extent that it could and he noted that the time of evaluation can affect observations (season, mowing, underbrush)

The committee discussed ideas for problem-solving the Level 2 review issue using backhoe pits:

1. Expand the use of courtesy reviews.
2. Expand the trust level between HD & AOSEs.
3. Allow hand-auger reviews where possible. If something unusual is present or hand-augers are not possible, then return to the site with backhoe (someone commented that this type of process would create delays and not effectively use limited VDH resources)
4. Have health department pre-select backhoe pits it will review while backhoe is there digging for the AOSE. Health Department takes plat and arranges to have that done before they come out. (someone commented that this process would not be possible. You can’t dig the pits ahead of time)
5. Review the backhoe pits already dug. Maybe use auger if possible.
6. Review based on the quality of the AOSE’s work. Place more emphasis on bad actors.
7. Review based on risk from geology (you know where the areas are).

Persons acknowledged that some local governments expected the health department to perform 100% Level 1 and Level 2 reviews. One person stated that he didn’t like the philosophy that the state health department had to bow to the requests of local government to the detriment of its business model to limit services in this area.

Persons agreed that the health department could not act until someone submitted an application (either the county or the AOSE/Owner). This person suggested that the health department could perform courtesy reviews in advance of applications to expedite reviews. However, another person stated that he would feel more comfortable reviewing

subdivisions after the zoning/planning review had been completed. Why spend time reviewing a subdivision that may not comply with planning/zoning requirements?

One person equated this problem to the engineering community. There are good and bad engineering designs. People reviewing the work do not review based on who the designer was and their reputation. Just reviewing based on the design. If AOSEs want to be elevated to professionals, then AOSEs needed to treat each other as professionals. The quality of work that you get, if you see a consistent pattern of poor quality work, the Level 2 should be more prevalent.

The committee asked to revisit this subject at a future meeting after members had time to consider the various ideas proposed.

The committee switched subjects to focus on the requirement to show all pertinent features within a 200-foot radius of property lines and/or where sewage systems are proposed. AOSEs try to show everything within 200-feet but sometimes cannot get access onto the neighbor's property. Without access, it is difficult to obtain the information. Maybe the AOSE will miss something, is there a double standard with respect to what VDH employees are expected to do? If you cannot get access to the private property, all one can do (AOSE or VDH employee) is to stand at the edge of property and look. Stakeholders must exercise due diligence to acquire all of the information possible. What's the problem being created?

During the Level 1 review, a comment will be to "field verify the location of..." The AOSE cannot field verify without trespassing. One of the solutions might be, instead of having a blanket 200-foot set-back, how about double the set-back required? If it's a well and drainfield close to property, maybe you should document it. My suggestion would be a moving target, set-back 10-feet for some things and 200-feet for other things. Allow AOSEs to take measurements from within the property and do not focus on measurements across property lines. If one is evaluating a 100-acre parcel, then there is no need to look across the property line. The property line should not be the trigger, shouldn't it just be the feature?

Critical and non-critical problems. We have this mix of critical and non-critical issues. I receive my share of them. If you list, "field verify, is that a critical problem? On the level 1 review, administrative denial, if you listed both of them, then that would help the AOSEs. AOSEs would know that the non-critical errors or missing information is not as important to fix as the critical issues. The health department would not have to send an administrative denial for non-critical errors or omitted information, such as mis-spelled words, wrong page numbering, etc. Of course, if the AOSE had a letter of the non-critical errors, that would help because they would recognize how to improve the work more quickly. On the other hand, AOSEs often find it insulting when the health department returns work because of typos and a list of minor issues. Can a bunch of minor issues become a big issue? One person noted that people should not forget that the health department is not performing Level 2 reviews in all cases. If the paperwork is sloppy, does that also mean that the field work was sloppy too? Another person stated

that Chesterfield County provides AOSEs with an observations letter, which is not an administrative denial or part of a Level 1 denial.

Some people consider a particular issue critical, while others do not care: citing wrong page numbers is an example. It could be a critical issue because the installer may not have the correct number of pages or know that he is missing information. If the lot number is listed incorrectly, then the installer might put the wrong system on the wrong lot. Some AOSEs receive a letter that says “conditionally approved.” The work is approved on the condition of fixing certain errors. This is a nicer way of communicating an administrative review of the paperwork. There is inconsistency on Level 1 and Level 2 reviews. The health department does not have a standard checklist of what to look for in each review. VDH has a quality assurance team that is working on some of these issues.

Some AOSEs see an “Approval letter with Comments”. The AOSE should have a voice in what is major or not major. While it may appear to be a typo error to the health department, the AOSE may think it is a critical error that needs fixing. What if the AOSE wants to change it after VDH already issued the approval? Before approval, may need to verify that it’s not a critical issue.

Some health departments use telephone and fax machines all of the time to handle these kinds of issues. Shoot a quick memo on what needs to be changed and avoid the denial letters. The biggest issue is that the health department must act within 15 days or the bad AOSE work becomes “deemed approved”. If you fax information to the AOSE and the AOSE does not fix it timely, then the bad work is deemed approved. That’s what drives VDH to send a denial letter.

If VDH sees a 1000 gallon pump chamber, but 1250 gallons is required, then it is a critical issue even though it is a typo. AOSE/VDH have to work together to reduce time to approval and build trust with one another. It is difficult to work to review AOSE work just as it is difficult for AOSEs to submit to 10 different review people with different expectations.

Can we come up with a template package? Core & critical components and then some superfluous information. AOSE regulations tell you what needs to be in the AOSE packet but there is no standardized template. AOSEs have a lot discretion in determining what their design and evaluation packets look like. Some PEs want to put a lot of things on a 24-inch sheet page while others use larger or smaller sheets. The committee has decided on a standard cover sheet with a table of contents. Hopefully, that will come soon. Forms are coming that will be standardized. A lot of the AOSE packages already look similar.

If you have ideas for Level 1 or Level 2 reviews, email Jim Bowles at james.bowles@vdh.virginia.gov so that the VDH quality review team can consider it.

The committee discussed separation distances from a restriction for proprietary, pre-engineered systems. The committee received a request to determine whether the separation distance is 12 inches or 18-inches. GMP #112, 114, and 118 are variances to the regulations. What variances do they have? There is a lot of stuff in the GMPs that are not covered in the regs: pad design, sizing, loading rates. Most localities say 18-inches to restriction even though you can get closer to the watertable.

One AOSE said that GMP #114 allows a 12-inch offset to a restriction. Another person said that while Puraflo's GMP stated offset to watertable, the company routinely considered their table as an offset to any limiting feature. Is Cr pervious or impervious? Why does it matter?

The committee discussed that there were different interpretations of the GMPs as a whole. Some people incorrectly think that the policies supercede the regulations. Were GMPs policy, interpretation of the regulations, or variances? Everyone agreed that AOSEs and VDH staff were not always clear on these issues.

One person stated that whether you had a restriction, a concrete table top, or whatever, you had an operational window to move water. If the water was not moving vertically, then the water would be moving laterally. One person thought that the new regulation development would remove the need for the GMPs. The Department is talking about going to some sort of "hybrid" system—not quite performance, not quite prescription. Nevertheless, the group thought that some interim guidance was necessary on how to implement the GMPs, such as the separation distance to a restriction. The committee agreed that VDH did not intend for GMP #112, #114, and #118 to have design advantages compared to one another. If one design were allowed with Advantex, then that same design should be possible with Puraflo. However, everyone thought that the verbiage of the policies were unclear. One person expressed the theme: "we don't care what the rule says, we just want to know what the rule is".

The committee discussed whether to make this recommendation to the Commissioner:

The committee recommends that the Commissioner ask the DOSWS to clarify policy #112, 114 and 118 regarding separation distances to all limiting factors. The committee further recommends that the commissioner communicate the relationship of gmps to the regulations for all stakeholders.

From several persons perspective, it looked as though Ecoflo and Advantex have an advantage over Puraflo. Persons also wondered how a court would address the conflicts of the GMPs with the regulations. The committee did not make a final recommendation but asked to revisit the topic at a future meeting after people had time to think about the issues.

Fostering Cooperation and Understanding:

Within the last 3 weeks, one VDH employee noted that he had two to three disgruntled AOSEs approach him about enforcement concerns about other AOSEs. How can AOSEs police themselves? If you have complaint, where do you complain? Local office versus central office debate. The local office simply referred the complaint to the person that was being complained about. That's inappropriate. One AOSE stated that he had evaluated a lot, and at the time of evaluation, no permit was possible. Nevertheless, when he drove by the site later, he noticed that the health department had approved the site. He contacted the health department to tell them to do a Level 2 review. Later, the AOSE learned that the local health department had told the builder and AOSE that he had filed a complaint on the work. If there is no guidance on complaint management, then it is easier to turn a blind eye and ignore it. Why would an AOSE complain when the only action is to call the offending party to say that so-and-so complained? This person suggested that VDH develop guidance on handling complaints of AOSE activity.

When you call the health department, you can call in anonymous or identify yourself. The health department should create a record of complaint, which is a public record. Someone can get that information if they want it. The issue is about the health department volunteering the information. One person commented, "if I were at the local health department, I would make an inquiry without naming names." Those who hold themselves to a high standard, high ethical standard, are obligated to report a problem. There are a few number of AOSEs, everyone would recognize my voice if any AOSE tried to file an anonymous complaint.

Whenever the health department receives a complaint, it has obligation to review the complaint's merit. VDH should not just pass it on to the AOSEs. A lot of AOSEs avoid complaining because of the way they perceive the local health department will handle the complaint. If AOSE #1 complains AOSE #2, the local health department should treat the information with privacy. One AOSE encouraged the local health department to forward complaints and issues to the central office. Central office never follow-up in writing on a complaint filed verbally. One person thought that private litigation would help solve these issues. AOSEs can be held accountable financially via court. You can point a lot of fingers, installation issues, site, construction, etc. but eventually, the bad work will get its justice.

When do complaints move from local to central? While it is a judgment call, most complaints should be shared with central office. There are some localities with routine and periodic meetings with AOSEs and staff. Rappahannock does it sporadically and it is very helpful. You get clarifications. For example, the Puraflo GMP, staff in Rappahannock will tell you this is how we are interpreting the GMP. Until they get clarification from central office, you know that in this district how they will assess AOSE work under the GMP. They've done the research, plus you get some buy-in. Loudoun, Chickohominy do some of this interaction too.

How can you get better attendance from AOSEs, the first one in Rappahannock had 30 AOSEs. There will be a population of AOSEs that go to nothing, some who will go to all of them, and another group who will come if the meetings are not held too frequently.

Send out an advance agenda to generate interest. Districts could do some joint planning. EHSes should be able to ask AOSEs about their opinions. Allow health department staff to come to these events. A lot of people weren't allowed to come to conferences or take time off. We can give as far as fees but regulators still do not come to conferences. How can we get additional collaboration?